83-215

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NO.

in the
Supreme Court
of the
United States

OCTOBER TERM 1983

HILDA BRIDGES,

Petitioner,

vs.

CAPE PUBLICATIONS, INC.,
and SCOTT MACLAY,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT

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and

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I.

QUESTION PRESENTED FOR REVIEW

WHETHER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION PROHIBIT A PRIVATE INDIVIDUAL, INVOLUNTARILY INVOLVED IN A NEWSWORTHY EVENT, FROM MAINTAINING A CAUSE OF ACTION AGAINST A MEDIA DEFENDANT FOR INVASION OF HER RIGHT OF PRIVACY THROUGH PUBLICATION OF LURID, THOUGH TRUTHFUL, PHOTOGRAPHS.

II.

INTRODUCTION AND LISTING OF PARTIES

Petitioner, HILDA BRIDGES, was the appellee/cross-appellant in the court below and plaintiff in the trial court. Respondents, CAPE PUBLICATIONS, INC., and SCOTT MACLAY, were appellants/cross-appellees in the lower court and defendants in the trial court.

In this Petition for Writ of Certiorari, the parties shall be referred to as Petitioner and Respondents and, in the alternative, by name. References to the required Appendix which accompanies this petition shall be preceded by the symbol "A." Unless otherwise indicated, all emphasis has been supplied by counsel.

TABLE OF CONTENTS

	Page
Question Presented for Review	i
Introduction and Listing of Parties	ii
Table of Authorities	iv
Reference to Opinion	1
Jurisdictional Statement	1
Relevant Constitutional Provisions	2
Statement of the Case and Facts	4
Reasons for Granting the Writ — Argument Thereon	7
Conclusion	14
Certificate of Service	15

TABLE OF AUTHORITIES

CASES — Page

Cason v. Baskin,
20 So.2d 243 (Fla. 1944) 13

Cox Broadcasting Corp. v. Cohn,
420 U.S. 469 (1975) 9, 10, 11, 12

Greenbelt Cooperative Pub. Assoc. v. Bresler,
398 U.S. 6 (1970) 8, 9

Jacova v. Southern Radio and Television Co.,
83 So.2d 34 (Fla. 1955) 13

Time, Inc. v. Hill,
385 U.S. 374 (1966) 7, 8

United States v. O'Brien,
391 U.S. 367 (1968) 12

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I 2, 7, 9, 12

U.S. Const. amend. IV 2

U.S. Const. amend. V 2, 3

U.S. Const. amend. IX 2, 3

U.S. Const. amend. XIV, §1 ..... 2, 3, 7, 9, 12

Fla. Const. art. I, §23 13

TABLE OF AUTHORITIES (Continued)

STATUTES	Page
28 U.S.C. §1257(3)	1

RULES OF COURT

Rule 9.040(e), Fla. R. App. Pro.	6

V.

REFERENCE TO OPINION

The official report of the opinion of the District Court of Appeal of the State of Florida, Fifth District, sought to be reviewed herein, is cited at *Cape Publications, Inc. v. Bridges*, 423 So.2d 426 (Fla. 5th DCA 1982). A copy of the opinion is contained in Petitioner's Appendix (A 2-6). Certiorari was denied by the Supreme Court of Florida.

VI.

JURISDICTIONAL STATEMENT

The certiorari jurisdiction of this Court is sought to be invoked by Petitioner for review of an opinion of the District Court of Appeal of the State of Florida, Fifth District, entered on November 24, 1982 (A 2-6), rehearing denied on December 14, 1982 (A 7). The Supreme Court of Florida declined to exercise its certiorari jurisdiction on May 12, 1983 (A 9).

Petitioner believes that this Court should exercise its discretionary certiorari jurisdiction because this case presents a substantial federal question which has not been, but should be, settled by the Court. Jurisdiction is invoked pursuant to 28 U.S.C. §1257(3).

VII.

RELEVANT CONSTITUTIONAL PROVISIONS

The instant cause presents for this Court's review and resolution a conflict between the First and Fourteenth Amendment rights of the Respondents, and the Petitioner's constitutional right of privacy embodied in the penumbrae of the First, Fourth, Fifth, Ninth and Fourteenth Amendments. The verbatim text of each of these Amendments is set forth below:

AMENDMENT I.

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT IV.

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VIII.

STATEMENT OF THE CASE AND FACTS

On Monday, August 1, 1977, the Petitioner, HILDA BRIDGES, was abducted at gunpoint from her place of employment by her estranged husband and taken to his apartment in Cocoa, Florida. There he held Petitioner hostage, where he beat her and forced her to remove all of her clothing.

Police officers who appeared at the scene attempted to persuade Petitioner's husband to release her and to surrender. When these efforts failed, the apartment building was surrounded and his surrender was ordered. From outside of the building, the officers heard a gunshot and a woman's scream. Upon entering the apartment, it was discovered that the husband had shot himself in the chest; he died shortly thereafter.

HILDA BRIDGES was escorted by police officers from the scene of the shooting, being forced to leave the apartment while unclothed, clutching a small towel to her body to cover her nakedness.

Two newspaper reporters employed by *Today Newspaper*, a publication of Respondent, CAPE PUBLICATIONS, INC., were present at the scene as the events described above transpired. Both took a number of photographs, including pictures of Petitioner as she was escorted nude from the apartment building. One of these photographs, taken by Respondent SCOTT MACLAY, was published in the August 2, 1977, edition of Respondent, CAPE PUBLICATIONS, INC.'S *Today*.

The other photograph was released by Respondent, CAPE PUBLICATIONS, INC., for dissemination through the Associated Press wire service and was subsequently published by other newspapers. The published photographs depict nude frontal views of the Petitioner, grasping a small towel, as she fled from the scene of her husband's suicide in the company of a police officer.

Suit was filed by Petitioner against Respondents and others on June 19, 1978 in the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida, alleging causes of action for, among other theories of recovery not of concern to this Court,[1] invasion of her constitutional right of privacy through the non-consensual publication of embarrassing, humiliating photographs (A 11-21). Constitutional objections to maintenance of the suit were immediately and continuously raised by Respondents, in their motion to dismiss (A 22-27) and subsequent pleadings.[2] Following amendments to Petitioner's complaint, the trial court denied the Respondents' motions for summary judgment (A 28-29).

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[1]Petitioner's original complaint asserted causes of action for invasion of privacy, intentional infliction of emotional distress and trespass.

[2]With respect to the invasion of privacy count, Respondents' initial motion to dismiss was granted with leave afforded to Petitioner to amend her pleadings. Amendments to the complaint were made, and constitutional objections raised by the Respondents, on two occasions. In answer to the Petitioner's Second Amended Complaint, Respondents alleged their First and Fourteenth Amendment privilege as an affirmative defense, and also sought summary judgment on that basis.

Petitioner's case was submitted to a jury on her Second Amended Complaint on theories of invasion of privacy and intentional infliction of emotional distress. Petitioner's jury returned a general verdict against Respondents of compensatory and punitive damages. Both parties appealed, Petitioner asserting that the jury had been improperly instructed as to punitive damages and that the amount of the verdict was inadequate, and Respondents contending that the offending publications were not actionable at common law and were absolutely privileged under the First and Fourteenth Amendments.[3]

The opinion of the District Court of Appeal of the State of Florida, Fifth District, found that there was no invasion of Petitioner's privacy by virtue of publication of her photographs in connection with a newsworthy event, that the trial court erred in denying defense motions for entry of a directed verdict and judgment notwithstanding the verdict, and that the challenged photographs fell within "a newspaper's privilege to publish news in the public interest" (A 6).

Petitioner's motion for rehearing filed with the court below was denied on December 8, 1982 (A 7), as was Petitioner's application for certiorari filed in the Supreme Court of Florida (jurisdiction declined on May 12, 1983) (A 9). This proceeding timely followed.

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[3]These arguments were initially presented in the appellate court in the parties' briefs, since assignments of error are not permitted in Florida. Rule 9.040(e), Fla. R. App. Pro. The issues presented for review by the Respondents in their briefs before that tribunal are reproduced in Petitioner's Appendix at pages 31 through 32.

IX.

REASONS FOR GRANTING THE WRIT— ARGUMENT THEREON

The issue submitted herein for review is one as to which, albeit the subject of recurring allusion, this Court has assiduously avoided decision, to wit: whether the media privilege of publication under the First and Fourteenth Amendments precludes a cause of action for invasion of a private individual's right of privacy for publication of truthful but damaging information (in this case, photographs).

In *Time, Inc. v. Hill*, 385 U.S. 374 (1966), Mr. Hill sued for invasion of his privacy due to a false media report that a new play purportedly portrayed a true account of an ordeal suffered by Hill and his family. The family had involuntarily been involved in a news report of an incident in which they had been held hostage. Thereafter, a book had been written which formed the basis for a play, which in turn was the subject of a false magazine story.

In deciding that case, upon a finding that "truth is a complete defense in actions under the [New York] statute based upon reports of newsworthy people or events," *Id.* at 383, the Court declined to address "[c]onstitutional questions which might arise if truth were not a defense. . . ."[4]

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[4]The parties in Hill were specifically requested to brief the following question: " '(1) Is the truthful presentation of a newsworthy item ever actionable under the New York statute as construed or on its face? . . .' " *Id.* at 382, fn. 6, quoting 384 U.S. 995.

In discussing the little protection afforded the privacy of an involuntarily newsworthy person under the statute, the Court noted the possibility that, in a "right of privacy" case, "the published matter need not be defamatory, on its face or otherwise, and might even be laudatory and still warrant recovery." *Id.* at 384, fn. 9. However, this Court declined to reach that issue,[5] stating that "the question whether the same standard should be applicable both to persons voluntarily and involuntarily thrust into the public limelight is not here before us." *Id.* at 391.

In *Greenbelt Cooperative Pub. Assoc. v. Bresler*, 398 U.S. 6 (1970), the Court had occasion to address the question of whether truthful media reports could form the basis for an action for alleged defamation, where the plaintiff had been accused in a public meeting of "blackmail" with respect to his legitimate business dealings, and an account of the accusation had thereafter been published. Although the Court again refused to be drawn into answering the broad question,[6] the following observation was made:

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[5]The holding of Hill was that "the constitutional protections for speech and press preclude the application of the New York statute to redress false reports of matters of public interest in the absence of proof that the defendant published the report with knowledge of its falsity or in reckless disregard of the truth." *Id.* at 467.

[6]In Greenbelt, the Court held that "as a matter of constitutional law, the word 'blackmail' in these circumstances was not slander when spoken, and not libel when reported in the Greenbelt News Review." *Id.* at 13.

> It is not disputed that the articles published in the petitioners' newspaper were accurate and truthful reports of what had been said at the public hearings before the city council. [fn. omitted] In this sense, therefore, it cannot even be claimed that the petitioners were guilty of any 'departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers,' Curtis Publishing Co. v Butts, supra, at 155, 18 L Ed 2d at 1111 (opinion of Harlan, J.), much less the knowing use of falsehood or a reckless disregard of whether the statements made were true or false. New York Times Co. v Sullivan, supra, at 280, 11 L Ed 2d 706.

Id. at 12-13.

It is this Court's decision in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), however, which most closely touches upon the question squarely presented in this case. In *Cox*, suit was filed by the father of a deceased, seventeen-year-old rape victim, claiming an invasion of privacy for release of his child's identity in television broadcasts. His action was founded upon a Georgia statute which made such disclosure punishable as a misdemeanor.

It appeared from the facts that the information disclosed had been obtained from judicial records. The defendants admitted the broadcasts but claimed that they were privileged under the First and Fourteenth Amendments. On appeal, the Georgia Supreme Court originally held that it was error to extend the applicable statute to a civil cause of action, but found that the

asserted misconduct gave rise to a common law cause of action for invasion of privacy not barred by either constitutional provision. On rehearing, the Georgia court disagreed that publication of the decedent's name was a matter of public interest, and upheld the constitutionality of the non-disclosure statute as a legitimate limitation upon the First Amendment. *Id.* at 474-475.

This Court reversed, but again declined to address "the broader question whether truthful publications may ever be subjected to civil or criminal liability consistently with the First and Fourteenth Amendments, or to put it another way, whether the State may ever define and protect an area of privacy free from unwanted publicity in the press. . . ." *Id.* at 491. Instead, the Court focused upon

> the narrower interface between press and privacy that this case presents, namely, whether the State may impose sanctions on the accurate publication of the name of a rape victim obtained from public records—more specifically, from judicial records which are maintained in connection with a public prosecution and which themselves are open to public inspection.

Id.

This narrow question was answered in the negative, but not without discussion of the direct confrontation posed between the equally fundamental constitutional claims of privacy and freedom of speech in cases involving otherwise private individuals and information:

> Because the gravamen of the claimed injury is the publication of information, whether true or not, the dissemination of which is embarrassing or otherwise painful to an individual, it is here that claims of privacy most directly confront the constitutional freedoms of speech and press. The face-off is apparent, and the appellants urge upon us the broad holding that the press may not be made criminally or civilly liable for publishing information that is neither false nor misleading but absolutely accurate, however damaging it may be to reputation or individual sensibilities.

Id. at 489.

This Court found no issue before it in *Cox* involving an action for invasion of privacy involving appropriation of one's name or photograph, no physical intrusion, and no claim that publication had been made of otherwise private information that was also false. Rather, the privacy interest at stake was "the right to be free from unwanted publicity about . . . private affairs, which, although wholly true, would be offensive to a person of ordinary sensibilities." *Id.*

In the case at bar, resolution of Petitioner's claim of invasion of privacy requires an answer to the question "carefully left open" in *Cox*, namely, in the words of the Court, "whether the First and Fourteenth Amendments require that truth be recognized as a defense in a defamation action brought by a private person as distinguished from a public official or public figure." *Id.* at 490.

It is important to note that Petitioner here sued Respondents, *not for the publication of truthful words*, but for the unnecessary, non-consensual publication of lurid, highly embarrassing *photographs* published in connection with the news story. Thus, this case does not present a clash of Petitioner's right of privacy with "pure speech" First and Fourteenth Amendment freedoms. Petitioner contends that the outrageous, offensive intrusion into her private affairs through publication of "nonspeech" elements does give rise to some limitation of the freedoms embodied in the First and Fourteenth Amendments.[7]

This Court acknowledged in *Cox* that "powerful arguments can be made, and have been made, that however it may be ultimately defined, there *is* a zone of privacy surrounding every individual, a zone within which the State may protect him from intrusion by the press, with all its attendant publicity." *Id.* at 487. (Emphasis in original.) Petitioner asserts that the gratuitous publication and dissemination by Respondents of sexually titillating photographs of her in this case served no legitimate constitutional purpose, but were tantamount to invasion of her privacy through misappropriation of

[7]Petitioner concedes that, were the published words alone the extent of Respondents' intrusion, her claim of violation of privacy would be constitutionally void. However, "[t]his Court has held that when 'speech' and 'nonspeech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms." United States v. O'Brien, 391 U.S. 367, 376 (1968).

her photographed likeness. Such publications also invaded Petitioner's right to be free from unwanted, though truthful, publicity about her private affairs.

It is clear that, absent an unfavorable federal constitutional interpretation, Florida law has long recognized the tort of invasion of privacy, even when a media defendant is involved. *Cason v. Baskin*, 20 So.2d 243 (Fla. 1944); *Jacova v. Southern Radio and Television Co.*, 83 So.2d 34 (Fla. 1955).[8]

Petitioner respectfully requests this Court to exercise its discretionary certiorari jurisdiction in this cause, to quash the opinion of the lower court, and to direct that court to reinstate Petitioner's appeal for reconsideration on the merits.

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[8]An individual's right of privacy in Florida now also enjoys state constitutional protection. Article I, Section 23, of the Florida Constitution, approved by the electorate in November 1980, provides: "Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right to access to public records and meetings as provided by law."

X.

CONCLUSION

Based upon the foregoing reasons and citations of authority, the Petitioner respectfully urges this Honorable Court to take jurisdiction of the instant cause, to review the cause on the merits, to quash the opinion herein sought to be reviewed, and to enter such other relief as this Court deems advisable under the circumstances.

Respectfully submitted,

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By:_____
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and

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By:_____
JAMES H. NANCE
Attorneys for Petitioner

X.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Writ of Certiorari was served, by mail, this ____ day of _____, 1983 on: JACK A. KIRSCHENBAUM, ESQ., 505 North Orlando Avenue, P. O. Box 757, Cocoa Beach, Florida 32931 and JOHN B. McCRORY, ESQ., Lincoln First Tower, P. O. Box 1015, Rochester, New York 14603, Attorneys for Respondents.

_____

JOAN H. BICKERSTAFF

Appendix

INDEX TO APPENDIX

	Page
Opinion	App. 2
Order Denying Rehearing	App. 7
Order Denying Petition for Writ of Certiorari	App. 9
Complaint with Exhibits	App. 11
Motion to Dismiss	App. 22
Order Denying Summary Judgment (as to Respondents)	App. 28
Initial Brief of Appellants; Issues Presented for Review	App. 31

[NOT FINAL UNTIL THE TIME EXPIRES TO FILE REHEARING MOTION, AND, IF FILED, DISPOSED OF.]

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT JULY TERM 1982

CAPE PUBLICATIONS, INC., and
SCOTT MACLAY,
Appellants/Cross-Appellees,

v.

HILDA BRIDGES,
Appellee/Cross-Appellant.

Opinion filed NOVEMBER 24, 1982

Appeal from the Circuit Court for Brevard County, Tom Waddell, Jr., Judge.

John B. McCrory and Robert C. Bernius, of Nixon, Hargrave, Devans & Doyle, Rochester, New York and Joe Teague Caruso and Jack A. Kirschenbaum, of Wolfe, Kirschenbaum, Caruso, Mosley & Kabboord, P.A., Cocoa Beach, for Appellants/Cross-Appellees.

Edward A. Perse, of Horton, Perse & Ginsberg, Miami, and Nance, Cacciatore & Sisseron [sic], Melbourne, for Appellee/Cross-Appellant.

DAUKSCH, J.

Appellee Bridges brought suit against appellants on the theories of invasion of privacy, intentional infliction of emotional distress, and trespass,[1] alleging that appellant's conduct in publishing a photograph of appellee was actionable. The news story reported the abduction of appellee by her estranged husband who came to her workplace and at gunpoint forced her to go with him to their former apartment. The police were alerted and after surrounding the apartment began efforts to free appellee. Her husband forced her to disrobe in an effort to prevent her escape. Her life was obviously in danger. This is a typical exciting emotion-packed drama to which newspeople, and others, are attracted. It is a newsworthy story. Upon hearing a gunshot, the police stormed the apartment and rushed appellee outside to safety. Appellee was clutching a dish towel to her body in order to conceal her nudity as she was escorted to the police car in full public view. The photograph revealed little more than could be seen had appellee been wearing a bikini and somewhat less than some bathing suits seen on the beaches. There were other more revealing photographs taken which were not published. The published photograph is more a depiction of grief, fright, emotional tension and flight than it is an appeal to other sensual appetites. The jury awarded appellee $1,000.00 in compensatory damages and $9,000.00 in punitive damages.

It is settled law in Florida that the right of privacy does not necessarily protect a person against the publication of his name or photograph in connection with the dissemination of legitimate news items or other matters of public interest. *Jacova v. Southern*

[1]The trespass claim was dismissed during trial.

Radio and Television Company, 83 So.2d 34 (Fla. 1955); *Cason v. Baskin*, 155 Fla. 198, 20 So.2d 243 (1944), *on appeal after remand*, 159 Fla. 31, 30 So.2d 635; *Harms v. Miami Daily News, Inc.*, 127 So.2d 715 (Fla. 3d DCA 1961). At some point the public interest in obtaining information becomes dominant over the individual's right of privacy. "It has been said that the truth may be spoken, written or printed about all matters of a private nature in which the public has a legitimate interest." *Cason v. Baskin*, 20 So.2d at 251. Within the scope of legitimate public concern are matters customarily regarded as "news." [2]

In determining the extent of the right of privacy, the standard by which the right is measured is based upon a concept of the person of reasonable sensibility; the hypersensitive individual will not be protected.

> An invasion of the right of privacy occurs not with the mere publication of a photograph, but occurs when a photograph is published where the publisher should have known that its publication would offend the sensibilities of a normal person, and whether there has been such an offense [sic] invasion of privacy is to some extent a question of law.

Jacova at 83 So.2d 36, 39.

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[2]Authorized publicity, customarily regarded as "news," includes publications concerning crimes, arrests, police raids, suicides, marriages, divorces, accidents, fires, catastrophes of nature, narcotics related deaths, rare diseases, etc. and many other matters of genuine popular appeal. Restatement of (Second) Torts, §652D Comment G (1977).

Although publication of the photograph, which won industry awards, could be considered by some to be in bad taste [3] the law in Florida seems settled that where one becomes an actor in an occurrence of public interest, it is not an invasion of her right to privacy to publish her photograph with an account of such occurrence.[4] *Jacova*, 83 So.2d at 36. Just because the story and the photograph may be embarrassing or distressful to the plaintiff does not mean the newspaper cannot publish what is otherwise newsworthy.

Likewise, the publication of the story and photograph does not meet the test of outrageousness as required for the independent tort of intentional infliction of

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[3]See *Neff v. Time, Inc.*, 406 F.Supp. 858, 860 (W.D. Pa. 1976) wherein the court noted:

> It seems to us that art directors and editors should hesitate to deliberately publish a picture which most likely would be offensive and cause embarrassment to the subject when many other pictures of the same variety are available. Notwithstanding, "[t]he courts are not concerned with establishing canons of good taste for the press or the public." (citation omitted).

[4]See Restatement of (Second) Torts, §652D Comment F (1977), which explains that such accounts are not an invasion of privacy to:

> [t]hose who are the victims of crime or are so unfortunate as to be present when it is committed, as well as those who are the victims of catastrophes or accidents or are involved in judicial proceedings or other events that attract public attention. These persons are regarded as properly subject to the public interest, and publishers are permitted to satisfy the curiosity of the public as to its heroes, leaders, villains, and victims, and those who are closely associated with them. As in the case of the voluntary public figure, the authorized publicity is not limited to the event that itself arouses the public interest and to some reasonable extent includes publicity given to facts about the individual that would otherwise be purely private.

emotional distress. *See Food Fair, Inc. v. Anderson*, 382 So.2d 150, 153 (Fla. 5th DCA 1980).

Courts should be reluctant to interfere with a newspaper's privilege to publish news in the public interest. The trial court erred in denying appellant's Motions for Directed Verdict and Judgment Notwithstanding the Verdict, so we must reverse the judgment.

REVERSED.

ORFINGER, C.J. and UPCHURCH, F., J., concur.

I hereby certify that the above and foregoing is a true copy of instrument filed in my office.

FRANK J. HABERSHAW, CLERK
DISTRICT COURT OF APPEAL OF
FLORIDA, FIFTH DISTRICT
Per /s/ Christina M. Wittman
Deputy Clerk

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT

CASE NO. 81-1552
81-1566

CAPE PUBLICATIONS, INC., and
SCOTT MACLAY,

Appellant/Cross-Appellee,

v.

HILDA BRIDGES,

Appellee/Cross-Appellant.

DATE: December 16, 1982

BY ORDER OF THE COURT:

ORDERED that Appellee's PETITION FOR REHEARING, filed December 8, 1982, is hereby denied.

I hereby certify that the foregoing is
(a true copy of) the original court order.

FRANK J. HABERSHAW, CLERK

By: /s/ Rowland W. Halliday
Deputy Clerk

(COURT SEAL)

cc: Edward A. Perse, Esquire
John B. McCrory, Esquire
Jack A. Kirschenbaum, Esquire

I hereby certify that the above and foregoing is a true copy of instrument filed in my office.

FRANK J. HABERSHAW, CLERK
DISTRICT COURT OF APPEAL OF
FLORIDA, FIFTH DISTRICT

Per /s/ Christina M. Wittman
Deputy Clerk

SUPREME COURT OF FLORIDA

THURSDAY, MAY 12, 1983

CASE NO. 63,088

District Court of Appeal,
5th District—Nos. 81-1552, 81-1566

HILDA BRIDGES,

Petitioner,

v.

CAPE PUBLICATIONS, INC., et al.,

Respondents.

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

BOYD, OVERTON, McDONALD and EHRLICH, JJ., concur
ADKINS, Acting C. J., dissents

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

By Kay O. Gent
Deputy Clerk

TC
cc: Hon. Frank J. Habershaw, Clerk
Hon. Tom Waddell, Jr., Judge
Hon. Raymond C. Winstead, Jr., Clerk

Edward A. Perse, Esquire
Nance, Cacciatore & Sisserson
John B. McCrory, Esquire
Robert C. Bernius, Esquire
Jack A. Kirschenbaum, Esquire

[FILED MAY 18 '78]

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR BREVARD COUNTY

NO: 78-1864-CA-01-C

HILDA BRIDGES,

Plaintiff,

-vs-

SCOTT MACLAY, CAPE PUBLICATIONS, INC., a Florida corporation, THE ASSOCIATED PRESS, a foreign corporation, and GANNETT NEWS SERVICES, INC., a foreign corporation,

Defendants.

COMPLAINT

The Plaintiff, HILDA BRIDGES, sues the Defendants, SCOTT MACLAY (hereinafter referred to as "Maclay"), CAPE PUBLICATIONS, INC., a Florida corporation, d/b/a TODAY Newspaper (hereinafter referred to as "Cape"), THE ASSOCIATED PRESS, a foreign corporation, (hereinafter referred to as "AP"), and GANNETT NEWS SERVICES, INC., a foreign corporation, (hereinafter referred to as "Gannett").

1. This is a suit for damages in excess of Two Thousand Five Hundred Dollars ($2,500.00) exclusive of interest and costs.

2. That at all times material hereto the Defendant "Cape" was a Florida Corporation doing business as Today, a newspaper of general circulation in central Florida area including Brevard County.

3. That at all relevant times the Defendant "Gannett" was a foreign corporation doing business in the State of Florida, Brevard County.

4. At all relevant times the Defendant "AP" was a foreign corporation doing business in the State of Florida and that the said Defendant furnished and supplied wire services and news and press transmissions and releases to newspapers and other media and other media sources within the State of Florida and performed said services within the State of Florida for news and press transmissions as aforesaid to other media sources out of the State of Florida.

5. That the Defendant "AP" is subject to impersonam jurisdiction of the courts of the State of Florida pursuant to Florida Statute §48.181 and §48.193 in that the said Defendant was actually doing business in the State of Florida as hereinabove set forth and did transmit or cause to be transmitted Plaintiff's Exhibits "B" and/or "C" as hereinafter set forth.

6. On or about August 1, 1977, the Plaintiff, Hilda Bridges, was abducted from her place of employment at McDonnell Douglas Aeronautics plant in Titusville, Brevard County, Florida at gunpoint by her then estranged husband, Clyde Bridges. She was transported to the premises of 619 Peachtree Street, Apartment 7, Cocoa, Florida (hereinafter referred to as "the premises").

The Plaintiff was held against her will at the premises until approximately 6:00 p.m. August 1, 1977, at which time she was forcibly removed from the premises by the Police immediately following the suicide of Clyde Bridges. The facts relating to the Plaintiff's abduction and subsequent release are more particularly set forth in the newspaper article published by the Defendant "Cape", a true copy of which is attached hereto as Exhibit "A", and by such reference made a part hereof. Of relevance to this action is the fact that the Plaintiff had been repeatedly beaten and compelled to disrobe, and at the time of her release from the premises, was in an acute state of shock and emotional distress.

7. Copies of the photographs depicting the Plaintiff's removal from the premises are attached hereto as Exhibits "B" and "C" and by such reference made a part hereof.

8. During the period of time that the Plaintiff was held hostage by Clyde Bridges at the premises, the Defendant "Cape" dispatched to the area the Defendant "Maclay", a staff photographer, who took the photographs represented by Exhibits "B" and "C" without the consent of the Plaintiff.

9. On August 2, 1977, Exhibits "B" and "C" were published by the Defendants "Cape" in Today Newspaper without the consent of the Plaintiff. Copies of Exhibits "B" and "C" were provided to the Defendants "AP" and "Gannett" who distributed them to various publications subscribing to their services with the result that copies of Exhibits "B" and "C" were published, without the consent of the Plaintiff, by a number of newspapers of general circulation throughout the United

States and other countries, including St. Petersburg Times and Today.

10. At all relevant times prior to her release by the Police, the Plaintiff was involuntarily in the custody of Clyde Bridges, and so remained under the duress of death or serious bodily injury.

11. At all relevant times in which the Plaintiff was nude, she remained in such condition solely and exclusively from fear of death or serious bodily injury from Clyde Bridges and from the instructions and actions of the policy [sic] in hastily removing her from the premises.

12. At all relevant times the Plaintiff was the co-lessee with Clyde Bridges under a lease agreement for the premises and had the right of possession to the premises together with the appurtenant common areas in the apartment building in which the premises are located.

COUNT I

13. The Plaintiff reiterates and adopts as if fully set forth herein the allegations of paragraphs 1 through 12 inclusive.

14. The act of photographing of the Plaintiff in the state of nudity in which she exited at the time that Exhibits "B" and "C" were taken constitute an invasion of her right to the privacy of her physical person so as to cause the damages more specifically hereinafter stated.

COUNT II

15. The Plaintiff reiterates and adopts as if fully set forth herein the allegations of paragraphs 1 through 12 inclusive.

16. By taking the photographs represented by Exhibits "B" and "C" and causing the same to be published in the Today Newspaper and to be distributed to, and published in, various other newspapers, the Defendants invaded the Plaintiff's right to privacy of her person so as to cause the damages more specifically stated hereinafter.

COUNT III

17. The Plaintiff reiterates and adopts as if fully set forth herein the allegations of paragraphs 1 through 12 inclusive.

18. In taking the photographs represented by Exhibits "B" and "C" the Defendant "Maclay" entered upon the property subject to the aforesaid lease agreement and appurtenant to the premises and did so without the consent of the Plaintiff or any other person authorized to grant such consent. Such entry upon this property constituted a trespass, and contributed directly and proximately to the damages more specifically stated hereinafter.

COUNT IV

19. The Plaintiff reiterates and adopts as if fully set forth herein the allegations of paragraphs 1 through 11 inclusive.

20. The photographing of the Plaintiff and subsequent publication and distribution of the photographs was an intentional act of the Defendants. Said photographs depicted the Plaintiff in such a derogatory, scandalous, degrading, defaming and embarrassing manner as to constitute a liable upon her person and to directly and proximately cause the damages more specifically hereinafter stated.

COUNT V

21. The Plaintiff reiterates and adopts as if fully set forth herein the allegations of paragraphs 1 through 11 inclusive.

22. The act of taking, publishing and distributing the photographs represented by Exhibits "B" and "C" was a deliberate, malicious and concerted act of the Defendants especially calculated to cause severe emotional distress and mental pain and anguish to the Plaintiff, a person of ordinary sensibilities. Further, it was conduct exceeding all bounds that could be reasonably tolerated by society, and contributed directly and proximately to the damages more specifically stated hereinafter.

COUNT VI

23. The Plaintiff reiterates and adopts as if fully set forth herein the allegations of paragraphs 1 through 12 inclusive.

24. As a direct and proximate result of the acts of the Defendants as aforesaid, the Plaintiff has suffered severe embarrassment, humilation, emotional suffering,

anguish, and mental pain and suffering, and will suffer the same in the future.

WHEREFORE the Plaintiff, Hilda Bridges, sues the Defendants, Scott Maclay, Cape Publications, Inc., The Associated Press and Gannett News Service, Inc., jointly and severally, and demands judgment for damages, both compensatory and punitive, in excess of Twenty-Five Hundred Dollars ($2500.00) exclusive of costs and interest and further requests trial by jury of all issues triable as of a right by jury.

NANCE, CACCIATORE & SISSERSON

/s/ James H. Nance
JAMES H. NANCE

/s/ Sammy Cacciatore
SAMMY CACCIATORE
525 N. Harbor City Boulevard
Melbourne, Florida 32935
(305) 254-8416
Attorney for Plaintiff

EXHIBIT "A"

Teen by Suicide

Police Watch Ordeal Of Titusville Woman

TODAY Staff Photo by Staff Photo

DGES FROM SHOOTING SCENE
r strip to keep her from escaping

By GLEN MACNOW
and SEAN HICKEY
TODAY Staff Writers

A Cocoa man, frustrated with a court order barring him from seeing his estranged wife, kidnaped her from work Monday and held her hostage for two hours before shooting himself through the heart.

Clyde Bridges, 31, of 619 Peachtree St., Apt. 7, was pronounced dead at the scene at his apartment shortly after 6 p.m. Monday after shooting himself once with a .357 magnum revolver, police said.

His wife, Hilda Bridges, 24, of Titusville, stripped of her clothes, came running from the apartment after the shooting, covering herself with a small towel. Although she was not wounded, police said, she suffered cuts and bruises on the head from an apparent beating. Officers theorized Bridges made his wife strip to keep her from escaping.

Bridges was to face trial next week on charges of narcotics possession and resisting arrest with a dangerous weapon. He was arrested in his apartment by sheriff's agents June 15 and had been out on $500 bail, according to a sheriff's department spokesman.

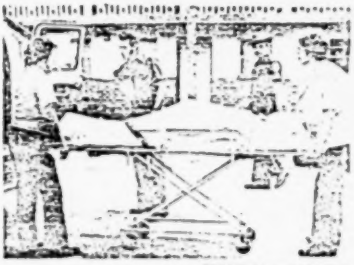
Bridges and his wife had been separated for about three weeks, neighbors said. Last week, a circuit court judge issued a restraining order barring him from contacting her.

Witnesses said Bridges, an unemployed air duct worker, approached his wife outside the McDonnell Douglas Astronautics Co. plant in Titusville, where she works, shortly after the 4 p.m. quitting time. He grabbed her and forced her into his car while several bystanders tried to stop him.

Witnesses said Bridges pulled a silver-plated revolver and waved it at those attempting to stop him before driving away.

"Everybody was trying to stop him," said Mae Kudukis, an assembly line worker at the plant. "But, he just kept driving in the lot trying to get away. He came close to hitting several people and finally took off across the front lawn. It

See SUICIDE, Col. 1
Back Page This Section

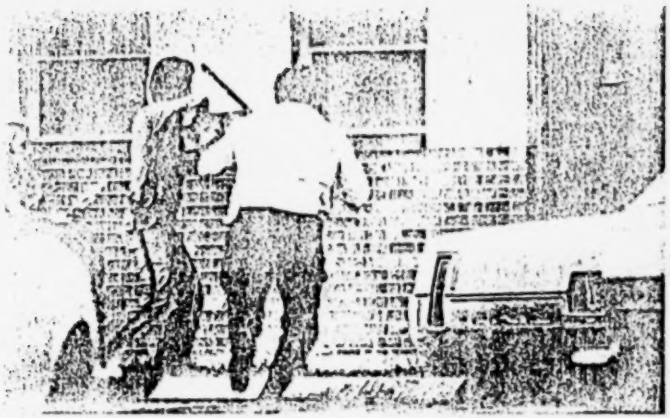


TODAY Staff Photo by Sue Brown

CLYDE BRIDGES' BODY IS REMOVED
. . . 31-year-old shot himself with .357 magnum

EXHIBIT "A"

App. 19



Left, Seconds After Ordering Clyde Bridges To Give Up Sheriff's Deputies Hear Shot; Right, Agents Rush His Cocoa Apartment

Cocoa Man Kills Self in Daylight Abduction

UICIDE, From 1A

re... mess."

ridges entered SR 405 ith a security exit, but ses couldn't tell if he toward I-95 or U.S. 1.

coa police set up a lock on U.S. 1 near nnett Causeway, but find the couple.

ocoa police spotted the an hour later outside ent' apartment. He oked up inside, using le as a hostage.

short time later, sher- partment agents, led ent. Mark Overacker Capt. Red May at- to talk Bridges into surrendering.

Action was stalled while agents sought vainly to locate a relative or friend of Bridges who could persuade him to give up. Another plan, talking to Bridges over the phone, failed when officers learned his apartment had no telephone.

Agents decided to move in and surround the apartment shortly after 6 p.m.

"Let's get this over with before dark," May told officers, "and please be careful."

Six squad cars from the sheriff's and Cocoa police departments drove up in front of the building, while other officers stood at the front and rear exits.

"Clyde Bridges, this is the Brevard County Sheriff's Department," May called through a bullhorn. "Come out with your hands up."

Seconds later, agents heard the pop of a revolver and the scream of a woman. Fearing Bridges had shot his wife, police rushed the building to find Mrs. Bridges nude, screaming in a corner and Bridges writhing on the floor, apparently reaching for the gun he had dropped after shooting himself.

A deputy kicked the gun away and within minutes, Bridges died of internal wounds as his dog stood whimpering over his body.

According to May, Mrs. Bridges seemed calm after the shooting, and wanted to give agents her statement before receiving medical treatment.

She told agents her husband had threatened to kill her after the kidnaping, and had charged, "I've had enough."

Mrs. Bridges was taken to Wuesthoff Memorial Hospital in Rockledge, where she was treated for shock and lacerations, and released. She was taken to the Titusville home of a friend.

Police said there was no indication she had been sexually assaulted.

Bridges' neighbors, who called him a quiet man, said they were shocked by his actions.

"He and his wife never did much fighting or screaming," said apartment owner Ann Graybill. "I was pretty surprised when she moved out a few weeks ago. He seemed like a nice person."

"Clyde used to come over when I got together with friends to drink beer and watch ballgames," said Bobby Smith who lived in the apartment above Bridges. "He didn't ever exhibit any stress."

"Sometimes he seemed kind of down," said Smith, who works at the Brevard Mental Health Center, "but it never seemed he would do something like this."

Sheriff's agents, however, had a different feeling about Bridges.

"Everything we did was with one thing in mind," said Overacker. "We wanted to get that girl out alive."

"In that sense," May added, "I guess we won."

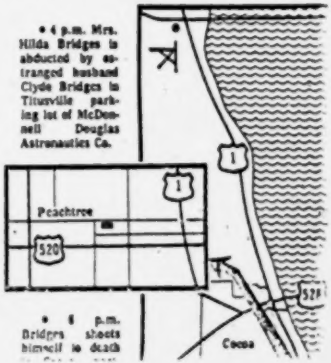

• 4 p.m. Mrs. Hilda Bridges is abducted by estranged husband Clyde Bridges in Titusville parking lot of McDonnell Douglas Astronautics Co.
Peachtree
520
1
• 6 p.m. Bridges shoots himself to death
Cocoa

EXHIBIT "B"

Sports Highlights

Miami Dolphins waive suspended players Randy Crowder and Don Reese, who are awaiting a trial in drug charges, 1C.

Cincinnati's George Foster homers twice as the Reds beat Chicago, 7-6; Cocoa Astros lose two to Lakeland, 1C. Complete sports, 1-3C.

Tuesday, August 2, 1977

TODA

Florida's Space Age Newspc

A Gannett newspaper published in Brevard County

Wife Freec

TODAY Staff Photo by Scott Hoc

CAPT. RED MAY ESCORTS HILDA BRIDGES FROM SHOOTING SCENE
. . . agents theorize her husband made her strip to keep her from escapin

Palm Beach 73 92

Nation

	H	L	Sky
Albany	80	71	cln
Albuquerque	92	68	cdy
Anchorage	69	55	cdy
Atlanta	89	70	cdy
Birmingham	92	71	cln

'I've had enough'

Unemployed, facing drug charges, man kidnaps estranged wife, then shoots himself to death

United Press International

COCOA — Clyde Bridges' neighbors said that he was a quiet man who masked his feelings. Then his marriage broke up.

"Clyde used to come over when I got together with friends to drink beer and watch ballgames," said Bobby Smith, who lived in the apartment above Bridges. "He didn't ever exhibit any stress."

A judge had issued a restraining order barring him from contacting his estranged wife. He faced trial next week on charges of narcotics possession and resisting arrest with a dangerous weapon.

MONDAY HE took up a gun.

Bridges, 31, kidnaped his estranged wife Hilda, 24, of Titusville from work Monday afternoon and held her hostage for two hours. Police surrounded his apartment, ordered him to surrender and were preparing to rush the home when Bridges shot himself through the heart and died.

Mrs. Bridges, stripped of her clothes, came running from the apartment after the shooting, covering herself with a small towel. Police theorized that Bridges made his wife strip to keep her from escaping.

WITNESSES said Bridges, an unemployed air duct worker, aproached his wife outside the McDonnell Douglas Astronautics Co. plant in Titusville where she works shortly after quitting time Monday. He grabbed her and forced her into his car while several bystanders tried to stop him.

Cocoa police spotted Bridges' car an hour later outside his apartment. He had barricaded himself inside, using his wife as a hostage.

Brevard County sheriff's deputies tried to talk Bridges into surrendering, but failed. Shortly after 6 p.m., officers moved in.

Seconds later, deputies heard a shot. Officers rushed into the apartment to find Mrs. Bridges nude, screaming in a corner and Bridges writhing on the floor, apparently reaching for the gun that he had dropped after shooting himself.

His dog stood whimpering over his body.

Brevard County Sheriff's Capt. Red May said Mrs. Bridges told deputies her husband had threatened to kill her after the kidnaping, saying: "I've had enough."

MRS. BRIDGES was treated at a Brevard hospital for shock and cuts and taken to a friend's home. Police said there was no indication she had been sexually assaulted.

Neighbors, meanwhile, recall Bridges as a quiet man.

"He and his wife never did much fighting or screaming," apartment owner Ann Graybill said. "I was pretty surprised when she moved out a few weeks ago. He seemed like a nice person."

What initiated the incident may have been a canceled meeting with his wife in which Bridges wanted to make a last attempt at reconciliation, Mrs. Bridges' attorney said.

Attorney Alexander Vance Jr. of Titusville, who was representing Mrs. Bridges in her divorce suit, said a meeting had been set up for 4 p.m. Monday in the office of Bridges' attorney, Ken Studstill.

"Hilda later decided she was not going to be there," Vance said. "I think because Bridges did not have a telephone, he did not learn she was not going to be there until he showed up for the meeting.

"This could have triggered the subsequent kidnaping," he said.

AP

Hysterical Mrs. Bridges is helped from apartment.

EXHIBIT "C"

App. 21

EXHIBIT "C"

[FILED MAY 16 448 PM '78]

IN THE CIRCUIT COURT OF THE
18TH JUDICIAL CIRCUIT IN AND
FOR BREVARD COUNTY, FLORIDA

CIVIL ACTION NO. 78-1864-CA-01-C

HILDA BRIDGES,

Plaintiff,

-vs-

SCOTT MACLAY, CAPE PUBLICATIONS, INC., a Florida corporation, THE ASSOCIATED PRESS, a foreign corporation, and GANNETT NEWS SERVICES, INC., a foreign corporation,

Defendants.

MOTION TO DISMISS

Defendants SCOTT MACLAY, CAPE PUBLICATIONS, INC., AND GANNETT NEWS SERVICES, INC., by undersigned counsel, hereby move the Court pursuant to Florida R.C.P. 1.140(d) (6), for an order dismissing Counts I through VI of Plaintiff's Complaint for failure to state causes of action, upon the following grounds:

COUNT I

1. As a matter of law, Count I of Plaintiff's Complaint fails to allege facts sufficient to constitute a cause of action for invasion of privacy under any of the four theories recognized by law in Florida. Specifically, the complaint fails to allege: an appropriation, for the Defendant's benefit or advantage, of the Plaintiff's name or likeness; an intrusion upon the Plaintiff's physical solitude or seclusion; a public disclosure, of a highly objectionable kind, of private information about the Plaintiff; or, publicity which places the Plaintiff in a false light in the public eye.

2. As alleged in Plaintiff's Complaint, Defendant MACLAY is a press photographer and thereby entitled to the free speech and free press privileges and protections afforded by the First and Fourteenth Amendments of the United States Constitution and Article I, Section 4 of the Constitution of the State of Florida. As a matter of law, the aforesaid constitutional privileges and protections prohibit imposition of liability on Defendant MACLAY for photographing the Plaintiff while she was involved in a matter of obvious legitimate general public interest and concern.

COUNT II

3. As a matter of law, Count I of Plaintiff's Complaint fails to allege facts sufficient to constitute a cause of action for invasion of privacy under any of the four theories recognized by law in Florida. Specifically, the complaint fails to allege: an appropriation, for the Defendants' benefit or advantage, of the Plaintiff's name

or likeness; an intrusion upon the Plaintiff's physical solitude or seclusion; a public disclosure, of a highly objectionable kind, of private information about the Plaintiff; or, publicity which places the Plaintiff in a false light in the public eye.

4. As alleged in Plaintiff's Complaint, Defendants are members of the press and thereby entitled to the free speech and free press privileges and protections afforded by the First and Fourteenth Amendments to the United States Constitution and Section I, Article 4 of the Constitution of the State of Florida. As a matter of law, the aforesaid constitutional privileges and protections prohibit imposition of liability on Defendants for the taking, publication and distribution of the photographs complained of while the Plaintiff was involved in a matter of obvious legitimate general public interest and concern.

COUNT III

5. As a matter of law, Count III of Plaintiff's complaint fails to allege facts sufficient to constitute a cause of action for trespass in that the complaint is devoid of allegations that Defendant MACLAY's entry onto the appurtenant or common grounds of the apartment complex was not peaceable, was made over objection of Plaintiff, or was not in accordance with common custom or usage.

6. As a matter of law, Count III of Plaintiff's Complaint fails to allege facts sufficient to constitute a cause of action for trespass in that Plaintiff has no standing to pursue such a cause of action for trespass

upon appurtenant or common grounds of an apartment complex which Plaintiff did not own and of which Plaintiff had no exclusive right of possession.

COUNT IV

7. As a matter of law, Count IV of Plaintiff's Complaint fails to allege facts sufficient to constitute a cause of action for libel, in that the complaint is devoid of any allegation that the photograph complained of was in any way false or inaccurate.

COUNT V

8. As a matter of law, Count V of Plaintiff's Complaint fails to allege facts sufficient to constitute any cause of action. As alleged in Plaintiff's Complaint, Defendants are members of the press and thereby entitled to the free speech and free press privileges and protections afforded by the First and Fourteenth Amendments to the United States Constitution and Section I, Article 4 of the Constitution of the State of Florida. As a matter of law, the aforesaid constitutional privileges and protections prohibit imposition of liability on Defendants for the taking, publication and distribution of the photograph complained of while the Plaintiff was involved in a matter of obvious legitimate general public interest and concern.

COUNT VI

9. As a matter of law, Count VI of Plaintiff's Complaint fails to allege facts sufficient to constitute a cause of action under any theory of law. Count VI of

Plaintiff's Complaint alleges no more than that Plaintiff has suffered damages, with no allegation of any duty owed the Plaintiff by the Defendants, any breach of any such duty, or that any breach of any such duty was the cause of the alleged damages.

WHEREFORE, Defendants SCOTT MACLAY, CAPE PUBLICATIONS, INC. and GANNETT NEWS SERVICES, INC. pray the Court enter an order dismissing Counts I through VI of Plaintiff's Complaint.

/s/ William T. McCluan

William T. McCluan, of
CROFTON, HOLLAND,
STARLING, HARRIS &
SEVERS, P.A.
P.O. Box 459
Melbourne, Florida 32901
(305) 724-1226

Attorneys for Defendants
MACLAY, CAPE AND
GANNETT

I HEREBY CERTIFY that a true copy of the foregoing was furnished by mail this 16th day of June, 1978, to Sammy Cacciatore, Esquire, NANCE,

CACCIATORE & SISSERSON, 525 N. Harbor City Boulevard, Melbourne, Florida 32935, Attorneys for Plaintiff.

/s/ William T. McCluan
Attorney

STATE OF FLORIDA,
COUNTY OF BREVARD

I HEREBY CERTIFY that the above and foregoing is a true copy of the original filed in this office.

R.C. WINSTEAD, JR.,
Clerk Circuit Court

Dated 7/26/83

By /s/ A. Claudius D.C.

[FILED OCT 5 1017 AM '81]

IN THE CIRCUIT COURT IN AND FOR
BREVARD COUNTY, FLORIDA.

CASE NO: 78-1864-CA-01-CB

HILDA BRIDGES,

Plaintiff,

vs.

SCOTT MACLAY, CAPE PUBLICATIONS INC., a Florida corporation, GANNETT NEWS SERVICES, INC., a foreign corporation, and ROBERT BROWN

Defendants.

ORDER

This cause came on to be heard on 16th day of September, 1981, upon the Motions for Summary Judgment of the Defendants Cape Publications, Inc., Scott Maclay, Gannett News Services, Inc., and Robert Brown. The Court having heard arguments of counsel, reviewing the file and being otherwise fully advised in the premises find that there are genuine issues of law and fact regarding the claims of the Plaintiff against the Defendants Scott Maclay, Cape Publications, Inc., and Robert Brown. The Court further finds that there are no genuine issues of law and fact in the claims of the Plaintiff against Defendant, Gannett News Services, Inc.

IT IS THEREUPON ORDERED AND ADJUDGED

1. That the Motions for Summary Judgment of the Defendants, Scott Maclay, Cape Publications, Inc., and Robert Brown be and the same is hereby denied.

2. That the Motion for Summary Judgment of the Defendant Gannett News Services, Inc., be and the same is hereby granted.

DONE AND ORDERED in Chambers at the Brevard County Courthouse, in Melbourne, Brevard County, Florida, this 18th date of September, 1981.

/s/ T. Waddell, Jr.
CIRCUIT JUDGE

I HEREBY CERTIFY that a copy of the foregoing has been furnished, by mail, to Jack A. Kirschenbaum, Esquire, Post Office Box 757, Cocoa Beach, Florida 32931 and John B. McCrory, Esquire, Post Office Box 1051, Rochester, New York 14603 this 24th day of September, 1981.

/s/ Jayne E. McGonigal
Secretary to Circuit Judge.

STATE OF FLORIDA,
COUNTY OF BREVARD

I HEREBY CERTIFY that the above and foregoing is a true copy of the original filed in this office.
R. C. WINSTEAD, JR.,
Clerk Circuit Court

Dated 7/26/83
By /s/ A. Claudius D.C.

IN THE DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA, FIFTH DISTRICT

5 DCA Case No. 81-1552
81-1566 (CONSOLIDATED)

Appeal from Circuit Court, Brevard County

HILDA BRIDGES,

Appellee-Cross Appellant,

-against-

SCOTT MACLAY and CAPE PUBLICATIONS, INC.,

Appellants-Cross Appellees.

INITIAL BRIEF OF APPELLANTS

NIXON, HARGRAVE, DEVANS & DOYLE
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WOLFE, KIRSCHENBAUM, CARUSO, MOSLEY & KABBOORD, P.A.
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Of Counsel (305) 783-2218
Attorneys for Appellants

TABLE OF CONTENTS AND ISSUES PRESENTED FOR REVIEW

Page

TABLE OF AUTHORITIES iii

PRELIMINARY STATEMENT 1

STATEMENT OF THE CASE 2

ISSUES PRESENTED FOR REVIEW 2

1. Is a newspaper's publication of a true and accurate photograph, portraying a major local news event, actionable, or is tort liability forbidden both constitutionally and by the common law? 2

2. Is a newspaper's publication of a true and accurate photograph, portraying an event which occurs in full public view, actionable, or is tort liability forbidden both constitutionally and by the common law? . 3

3. May punitive damages constitutionally be imposed upon a newspaper which publishes a true and accurate news photograph? ... 3

STATEMENT OF THE FACTS 3

A. Introduction 3

B. The Criminal Episode 4

C. The News Story 5

SUMMARY OF ARGUMENT 8

Office-Supreme Court, U.S.
FILED
SEP 12 1983
ALEXANDER L. STEVAS,
CLERK

No. 83-215

In The

Supreme Court of the United States

October Term, 1983

HILDA BRIDGES,

Petitioner,

vs.

CAPE PUBLICATIONS, INC. and SCOTT MACLAY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT

BRIEF IN OPPOSITION

JOHN B. McCRORY, P.C.
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Joe T. Caruso
Jack Kirschenbaum
Wolfe, Kirschenbaum, Caruso,
Mosley & Kaboord, P.A.
505 N. Orlando Avenue
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Of Counsel

September, 1983

QUESTION PRESENTED

1. May a newspaper, which lawfully obtains and publishes an accurate photograph of a major public news event in Brevard County, Florida, be held liable for tortious "invasion of privacy" consistently with Florida common law and the First and Fourteenth Amendments to the United States Constitution?

LIST OF PARTIES TO THE PROCEEDING

The caption of the case in this Court contains the names of all parties. Gannett Co., Inc., a non-party, is the parent company of Respondent Cape Publications, Inc. and of Gannett News Service, Inc., a dismissed former party (Pet. App. A-29).

TABLE OF CONTENTS

	Page
Question Presented	*i*
List of Parties to the Proceeding	*i*
Table of Authorities	*iii*
Opinions Below	1
Jurisdiction	1
Authorities Involved	2
Statement of the Case	2
Facts	2
History of the Case	3
Argument	4
(a) The opinion below is based solely upon Florida tort law	4
(b) Petitioner raises no substantial federal question	6
(c) Petitioner abandoned her current claim in the Florida courts	7
Conclusion	8
Appendix	A-1

TABLE OF AUTHORITIES

Cases:	Page
Banks v. California, 395 U.S. 708 (1969)	7
Beck v. Washington, 369 U.S. 541 (1962)	8
Cason v. Baskin, 155 Fla. 198, 20 So.2d 243 (1944), *on appeal after remand*, 159 Fla. 31, 30 So.2d 635 (1947)	5
Fletcher v. Florida Publishing Co., 319 So.2d 100 (Fla. 1st DCA 1975), *rev'd on other grounds*, 340 So.2d 914 (Fla. 1976), *cert. denied*, 431 U.S. 930 (1977)	6
Gibson v. Maloney, 231 So.2d 823 (Fla.), *cert. denied*, 398 U.S. 951 (1970)	6
Harms v. Miami Daily News, Inc., 127 So.2d 715 (Fla. 3d DCA 1961)	5
Jacova v. Southern Radio and Television Company, 83 So.2d 34 (Fla. 1955)	5
Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952)	7
Kaplan v. California, 413 U.S. 115 (1973)	7
Stratton v. Stratton, 239 U.S. 55 (1915)	7

Constitutions, Statutes and Regulations:

United States Constitution:

First Amendment 4, 5, 7

Fourteenth Amendment 4

Statutes:

28 U.S.C. § 1257 . . . . . 1, 7

Other Authorities:

Fla. R. App. P. Rule 9.030(a) (2) (A) (ii) 2, 7

Fla. R. App. P. Rule 9.030(a) (2) (A) (iv) 4, 8

W. Prosser, *Law of Torts* § 118 (4th Ed. 1971) 6

Restatement (Second) of Torts, § 652 D 6

In The

Supreme Court of the United States

October Term, 1983

No. 83-215

HILDA BRIDGES,

Petitioner,

vs.

CAPE PUBLICATIONS, INC. and SCOTT MACLAY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT

BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court of Appeal of the State of Florida (Pet. App. A-2 thru A-6) is reported at 423 So.2d 426 (1982).

JURISDICTION

The decision of the District Court of Appeal of the State of Florida, Fifth District, was entered on November 24, 1982 (Pet. App. A-2), and that Court denied rehearing on December 14, 1982 (Pet. App. A-7). The decision of the Supreme Court of Florida, declining to accept jurisdiction, was entered on May 12, 1983 (Pet. App. A-9 and A-10). The Petition for a Writ of Certiorari was filed by mail on August 9, 1983. Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

AUTHORITIES INVOLVED

The text of Rule 9.030(a) of the Florida Rules of Appellate Procedure is set forth in Respondents' Appendix hereto at A-1.

STATEMENT OF THE CASE

Facts

On Monday afternoon, August 1, 1977, Petitioner Hilda Bridges was kidnapped at gunpoint by her estranged husband, Clyde Bridges, from the McDonnell Douglas plant in Titusville, Forida. Waving a revolver at employees who tried to stop him, Clyde forced Hilda into his car and fled with her to their former apartment in Cocoa, Florida. Clyde, who held Hilda in the apartment at gunpoint, ordered her to disrobe, apparently in an effort to prevent her escape.

Police and Sheriff's Deputies had been alerted to the forcible abduction, but failed to intercept the 19-mile flight to Cocoa. They later discovered where Hilda Bridges was being held captive, and surrounded the apartment building with a large number of police cars and armed officers.

After a period of siege, police issued their final order, by bullhorn, to the abductor to surrender. Seconds later, a gunshot rang out and a scream was heard. Officers, with guns and rifles drawn, burst into the apartment, and found the kidnapper writhing on the floor, groping for the gun with which he had shot himself. A police officer kicked the gun beyond the kidnapper's reach. Hilda Bridges fled the apartment with another police officer, shielding herself with a towel in front of her, and ultimately was ushered into a police car.

During her escape, Hilda Bridges was in full public view of spectators on adjacent public streets and properties. Two photographers employed by TODAY newspaper, including Respondent Scott Maclay, were among those gathered behind

police lines outside the apartment building. They took numerous photographs of the police siege, and of Hilda Bridges' traumatic escape from the surrounded apartment.

The next morning, five of those photographs were published, along with detailed news articles describing the criminal episodes, in TODAY newspaper by Respondent Cape Publications, Inc. A reproduction of that news article and photograph (subjectively and unjustifiably characterized by Petitioner as "lurid" and "sexually titillating" [Pet. i,12]), is annexed at A-2 to A-3 of Respondents' Appendix to this Brief. Contrary to Petitioner's claim, the photograph does not depict a "nude frontal view" (Pet. 5).[1] As the court below stated: "[T]he photograph revealed little more than could be seen had [Bridges] been wearing a bikini and somewhat less than some bathing suits seen on the beaches . . . The published photograph is more a depiction of grief, fright, emotional tension and flight than it is an appeal to other sensual appetites." (Pet. App. A-3).

History of the Case

The photograph of Bridges' escape from captivity — which won photographic "spot news" awards from local, state and national press organizations — formed the basis for this case, in which Bridges sought damages from the newspaper and its photographer for a variety of torts (Pet. App. A-11 thru A-17), including invasion of privacy by disclosure of "private facts."

In September, 1981, the action was tried before a jury, which awarded Bridges $1,000 compensatory damages and $9,000 punitive damages. On appeal, the Florida District Court of Appeal unanimously reversed the judgment and dismissed the action as a matter of law (Pet. App. A-6). The Court held that,

[1]The newspaper front page annexed hereto was submitted to the Florida District Court of Appeal, and is identical to the front page annexed to Petitioner's Complaint (Pet. App. A-18 and A-20) except for the text of its headlines.

under settled Florida law, it is not an invasion of privacy to publish a newspaper photograph of an occurrence of public interest, notwithstanding the event may have been embarrassing or distressful to those involved in it (Pet. App. A-5). The District Court of Appeal denied Bridges' motion for rehearing on December 14, 1982 (Pet. App. A-7).

On January 10, 1983, Bridges sought to have the Florida Supreme Court review the case pursuant to its "conflict" jurisdiction. Fla. R. App. P. Rule 9.030(a) (2) (A) (iv) (Resp. App. A-6). In the Florida Supreme Court, Bridges did not raise the issue which she presents to this Court. Instead, Bridges specifically asked the Florida Supreme Court to "set . . . aside any questions relating to Bridges' cause of action for invasion of privacy" (Resp. App. A-11). The Florida Supreme Court declined to accept jurisdiction on May 12, 1983 (Pet. App. A-9 and A-10).

ARGUMENT

The Petition must be denied because the opinion of the Court below was based solely upon Florida common law, not upon any interpretation of federal constitutional principles. Further, the opinion is consistent with federal law long ago established by this Court. Finally, the question presented to this Court was not preserved for review, since Petitioner disclaimed that very question in the Supreme Court of Florida when she unsuccessfully sought to have that Court accept jurisdiction of the case.

(a) *The opinion below is based solely upon Florida tort law.*

Throughout the history of this case, Respondents newspaper and photographer insisted that the First and Fourteenth Amendments precluded tort liability for publication of the accurate photograph of Bridges' newsworthy escape from captivity (Pet. App. A-23 thru A-26; A-32). Respondents also

consistently argued that the publication was not tortious under Florida common law *(id.)*. The opinion below discussed only the Florida common law of privacy, and dismissed the action solely through application of State tort principles.

The District Court of Appeal, which did not even mention the First Amendment in its opinion, merely analyzed the development of the "privacy" tort in Florida, and concluded that Florida law is "settled that where one becomes an actor in an occurrence of public interest, it is not a tortious invasion of privacy to publish her photograph with an account of such occurrence." (Pet. App. A-5).

That "settled" principle of tort law was established in Florida in *Cason v. Baskin,* 155 Fla. 198, 20 So.2d 243 (1944), *on appeal after remand,* 159 Fla. 31, 30 So.2d 635 (1947), which for the first time recognized the "invasion of privacy" tort in Florida. The Florida Supreme Court carefully circumscribed the new tort, however, holding that Florida law does *not* proscribe publication of the name or picture of persons in connection with publication of news. *Cason v. Baskin, id.,* 20 So.2d at 251. In *Jacova v. Southern Radio and Television Company,* 83 So.2d 34, 36 (Fla. 1955), the Florida Supreme Court reiterated its earlier holding that publication of a news photograph, such as that of Bridges, does not interfere with the zone of privacy protected in that State: "Where one, willingly or not, becomes an actor in an occurrence of public or general interest, he emerges from his seclusion, and it is not an invasion of his 'right of privacy' to publish his photograph with an account of such occurrence [citation omitted]." *Accord, Harms v. Miami Daily News, Inc.,* 127 So.2d 715 (Fla. 3d DCA 1961).

The Court below clearly did not construe the First Amendment to limit an otherwise viable State tort claim by Bridges. Rather, it simply acknowledged "settled" common law in Florida: truthful publication of news — both textual and

photographic — is not tortious. *Accord,* Restatement (Second) of Torts, § 652 D, comments d, g; W. Prosser, *Law of Torts* § 118, p. 824-25 (4th Ed. 1971).

Petitioner alleges that this case "requires an answer to the question" whether truth is a defense to Petitioner's claim for invasion of privacy (Pet. 11). The answer to that question, however, may again be found in State law. This case involves a claim for invasion of privacy for public disclosure of alleged embarrassing private information. The defense to that branch of invasion of privacy, under Florida tort law, is newsworthiness, not truth. In *Fletcher v. Florida Publishing Co.,* 319 So.2d 100, 111 (Fla. 1st DCA 1975), *rev'd on other grounds,* 340 So.2d 914 (Fla. 1976), *cert. denied,* 431 U.S. 930 (1977), the trial court dismissed a fire victim's privacy claim against a Florida newspaper, which had published a photograph of the silhouette of the charred body of plaintiff's daughter. Dismissal was affirmed because the public's interest in such matters is "obvious:"

> Unquestionably the fire in appellant's home coupled with the tragic death of her daughter was of obvious legitimate public interest. That the published matter complained of is of general public interest has always been considered a defense to a claim of invasion of privacy by publication. Finding that the matter published was of obvious legitimate public interest, the publication, per se, was not an invasion of privacy.

Accord, Gibson v. Maloney, 231 So.2d 823, 825 (Fla.), *cert. denied,* 398 U.S. 951 (1970).

(b) *Petitioner raises no substantial federal question.*

Even assuming that the opinion below did reach a federal constitutional issue, review by this Court would nevertheless be inappropriate.

Bridges' argument to this Court is indistinct and ambiguous.

As best it can be discerned from her Petition, Bridges concedes that the newspaper's publication of the text of the news article concerning her escape was absolutely privileged by reason of the First Amendment (Pet. 12; Pet. App. A-13). Inappropriately, she then argues to this Court that the concurrent publication of the photograph of her escape is not constitutionally privileged, upon the ground that the photograph is not "speech" (Pet. 12 and n. 7).

It is apparent that Petitioner's claim is specious. No rational constitutional principle or interpretation can fully protect a newspaper's accurate textual description of a newsworthy event (no matter how graphic) yet simultaneously afford no protection to an accompanying photograph of that event (no matter how innocuous). News photographs are as much encompassed and protected by the First Amendment as are newspaper articles. *See Kaplan v. California*, 413 U.S. 115, 119 (1973); *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952). Petitioner's theory does not present a substantial federal question.

(c) *Petitioner abandoned her current claim in the Florida courts.*

This Court has jurisdiction to review only final judgments and decrees of "the highest court of a State in which a decision could be had." 28 U.S.C. § 1257; *Banks v. California*, 395 U.S. 708 (1969). Where a State's highest court has discretionary jurisdiction, review in that court must be sought before jurisdiction exists in this Court. *Stratton v. Stratton*, 239 U.S. 55 (1915).

The Florida Supreme Court has discretionary jurisdiction to review decisions of District Courts of Appeal which expressly construe a provision of the federal Constitution. Fla. R. App. P. Rule 9.030(a) (2) (A) (ii). Bridges did not seek Florida Supreme Court review on that ground. Instead, she attempted

to appeal pursuant to the Florida Supreme Court's separate "conflict" jurisdiction. Fla. R. App. P. Rule 9.030(a) (2) (A) (iv). In so doing, Bridges expressly disclaimed reliance upon the arguments she presents here when she requested the Florida Supreme Court to "set. . . aside any questions relating to Bridges' cause of action for invasion of privacy . . ." (Resp. App. A-11). Petitioner's disavowal of her "invasion of privacy" claim in the Florida Supreme Court must be deemed a waiver of her right to raise the issue in this Court. *See Beck v. Washington*, 369 U.S. 541 (1962).

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Dated: September, 1983

Respectfully submitted,

JOHN B. McCRORY, P.C.
ROBERT C. BERNIUS

Attorneys for Respondents

FLORIDA RULES OF APPELLATE PROCEDURE

RESPONDENTS' APPENDIX

Rule 9.030. Jurisdiction of Courts

(a) Jurisdiction of Supreme Court

* * *

(2) *Discretionary Jurisdiction.* The discretionary jurisdiction of the Supreme Court may be sought to review:

(A) decisions of district courts of appeal that:

(i) expressly declare valid a state statute;

(ii) expressly construe a provision of the state or federal constitution;

(iii) expressly affect a class of constitutional or state officers;

(iv) expressly and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law;

(v) pass upon a question certified to be of great public importance;

(vi) are certified to be in direct conflict with decisions of other district courts of appeal;

(B) orders and judgments of trial courts certified by the district court of appeal in which the appeal is pending to require immediate resolution by the Supreme Court, and:

(i) to be of great importance, or

(ii) to have a great effect on the proper administration of justice;

(C) questions of law certified by the Supreme Court of the United States or a United States Court of Appeals that are determinative of the cause of action and for which there is no controlling precedent of the Supreme Court of Florida [footnotes omitted].

NORTH KOREA establishes unprecedented 'military sea boundary' and says most foreign ships and planes will be banned from entering area without permission, 1A

SECRETARY OF State Cyrus Vance says in Egypt he plans to 'see what we can do to speed this process' toward Mideast peace talks that include Palestinians, 5A

POLICE KILL man, wound another in putting down disturbances in township of Soweto near Johannesburg, 8A

REPUBLICAN LEADERS accuse President Carter of 'blatant political payoff' in supporting legislation to require that American tankers get preference in hauling imported oil, 3A

CARTER

HOUSE OPENS debate on President Carter's energy plan and President makes direct public appeal for passage of critical elements, including five-cent per gallon increase in gasoline taxes, 5A

SENATE DEMOCRATS fail to break Republican-led filibuster against bill allowing Senate candidates to tap treasury for campaign funds, 3A

CHEMICAL USED to inflate airbags is highly toxic and presents threat of explosion, Rep. Bud Shuster, R-Pa., says, 5A

AFL-CIO President George Meany says it would be 'blatant discrimination' to create lower minimum wage for youths, 7A

STEEL INDUSTRY believes iron ore workers' strike will have little immediate effect on steel production, 10C

IN FLORIDA

JUPITER MAN surrenders after being wounded while barricading himself in bar with two hostages, 4B

SURVIVOR OF blood bath that left six dead in Miami suburb last week provides information for police sketch, 4B

ON-THE-AIR suicide three years ago hasn't changed television talk show, says news director, 4B

IN BREVARD

COUNTY WORKERS are seeking a 15.7 per cent wage hike as union negotiations open, 1B.

PRESIDENTIAL ADVISOR tours the USS James Madison, a submarine docked at Port Canaveral, 1B.

TEACHERS WILL be paid for time they spent at PTA seminars, an arbitrator rules, 1B.

SPECIALS TODAY

AREA FISHERMEN have found a cure for poor trout fishing this summer. It's pigfish, a grunting baitfish found around bulkheads or old piers. Bill Sargent has the details, 3C.

DEEJAYS PLAY the name game for a variety of reasons, including that of avoiding harassment from fans and fanatics alike, but the end result is that pseudonyms fill the air, 1D.

TODAY's Features

Army Chris, 1D	Letters, 6A
Bridge, 3D	Local News, 1-3B
Business, 8-10C	Mary Smith, 1C
Classified, 3-7C	Mel Saloman, 1B
Comics, 6D	Movies, 2D
Crossword, 5D	Nation and Focus, 2A
Dear Abby, 5D	People, 1-3D
Deaths, 2B	Sports, 1-3E
Earl Wilson, 9D	State Briefs, 4B
Editorials, 4 & 7A	Television, 2D
HELP!, 1B	Weather, 2A
Horoscope, 5D	

Four Sections

TODAY Staff Photo by Scott Hooten

CAPT. RED MAY ESCORTS HILDA BRIDGES FROM SHOOTING SCENE
. . . agents theorize her husband made her strip to keep her from escaping

Five Senators Defy Disclosure Deadline

- List of lawmakers who didn't file, 6A
- Circuit Court Judge Roger Dykes files, 1B

TALLAHASSEE (AP) — Senate President-designate Philip D. Lewis and four other prominent senators defied the voters Monday by refusing to file their financial disclosure statements.

The forms of as many as 20 lawmakers weren't on file in a state Elections Division that was rushing under an avalanche of paper. More than 1,000 officials tried to meet the Monday deadline for filing the forms or being vulnerable to sanctions that may be imposed by the Legislature or the state Ethics Commission.

Of the officials who did file, Agriculture Commissioner Doyle Conner reported a net worth of $964,431; House Speaker Donald Tucker reported a net worth of $420,200 while Comptroller Gerald Lewis said his net worth was $58,581.

These reports and others were filed under the right - disclosure requirements that the voters approved last November by more than 1.7 million Floridians voters ordered elected state and county officials to publicly report their finances after the Legislature balked repeatedly at tough disclosure proposals.

Ethics Commissioner Dexter Lehtinen said his staff would draw up a list of the officials who hadn't filed and turn that over to the panel at its Aug. 23 meeting. However, he said the panel may not be able to take disciplinary action unless sworn complaints are filed.

Under the Sunshine Amendment, officials are required to list a source of part of their assets and to estimate in excess of $1,000 their net worth and either their latest income tax return or stock income source worth more than $1,000 and their secondary income sources.

Most of Florida's 140 lawmakers and top statewide officials filed the forms but some appointed not to have filed them not completely. Through it all, confused officials raged with the rules.

"We're getting calls from attorneys and representatives all over the state wanting to know if it's all right to mail them today," said Wilmont Farrell, chief of the elections records bureau. "They're not fines if they're in the mail. This is

See DISCLOSURE, Col. 4 Back Page This Section

By GLEN MACNOW and SEAN HICKEY
TODAY Staff Writers

A Cocoa man, free on bond with a court order barring him from seeing his estranged wife, kidnaped her from work Monday and held her hostage for two hours before shooting himself through the heart.

Clyde Bridges II, of 619 Peachtree St., Apt. 3, was pronounced dead at the scene of his apartment shortly after 6 p.m. Monday after shooting himself once with a .357 magnum revolver, police said.

His wife, Hilda Bridges, 24, of Titusville, stripped of her clothes came running from the apartment after the shooting covering herself with a small towel. Although she was not wounded, police said, she suffered cuts and bruises on the head from an apparent beating. Officers theorized Bridges made his wife strip to keep her from escaping.

Bridges was to face trial next week on charges of narcotics possession and resisting arrest with a dangerous weapon. He was arrested in his apartment by sheriff's agents June 15 and had been out on $900 bail, according to a sheriff's department spokesman.

Bridges and his wife had been separated for about three weeks, neighbors said. Last week a circuit court judge issued a restraining order barring him from contacting her.

Witnesses said Bridges, an unemployed air duct worker, approached his wife outside the McDonnell Douglas Astronautics Co. plant in Titusville, where she works, shortly after the 4 p.m. quitting time. He grabbed her and forced her into his car while several bystanders tried to stop him.

Witnesses said Bridges pulled a silver-plated revolver and waved it at those attempting to stop him before driving away.

"Everybody was trying to stop him," said Mae Kubiko, an assembly line worker at the plant. "But he just kept driving in the lot trying to get away. He came close to hitting several people and finally took off across the front lawn. It

See SUICIDE, Col. 1 Back Page This Section

TODAY Staff Photo by Bob Brown

CLYDE BRIDGES' BODY IS REMOVED
. . . 21-year-old shot himself with .357 magnum

Officer's Son Got A 'Ringside Seat'

By GLEN MACNOW
TODAY Staff Writer

Ray Phelps Jr. of Cocoa said he wanted to watch his deputy sheriff father on the job Monday "just to see what it was like."

"He told me his work was exciting," Ray Jr. said, "so I decided to tag along for a day."

Ray Phelps Jr. and Ray Phelps, Sr. ended up with more excitement than they planned, however, when the sheriff's department officer had two men wound up in a tense vigil that ended in death.

Ray Jr., 18, said his father had offered to let him ride in the squad car Monday during the officer's daily rounds.

"I'm thinking of becoming a policeman myself," said the Cocoa High student. "So I didn't hesitate on his offer."

"Of course I didn't figure that I'd end up watching my father risk his life," he added.

Father and son were driving near the sheriff's station in Titusville when a radio call directed them to a possible kidnaping situation at 619 Peachtree St. in Cocoa.

By the time they got there, the neighborhood was swarming with police cars and the accused man had barricaded himself in an apartment house with a hostage.

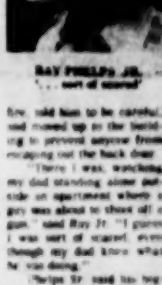
Ray Sr. calmly placed his son out of the line of fire, told him to be careful, and moved up to the building to prevent anyone from escaping out the back door.

"There I was, watching my dad standing alone outside an apartment where a guy was about to shoot off a gun," said Ray Jr. "I guess I was sort of scared, even though my dad knew what he was doing."

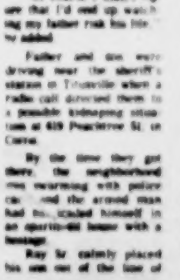
Phelps Sr. said his biggest worry was the safety of the hostage inside the apartment.

"You can't get nervous in this type of situation," he said. "There's just no time for it. Afterward, I got home and got nervous."

As Phelps Jr. watched, there was a gunshot and his father rushed toward the door of the house with other officers. In a few moments, the drama was over. One man was dead, but no police officers were injured. The hostage was safe.



RAY PHELPS JR.
. . . sort of scared



FRANCIS GARY POWERS
. . . TV helicopter pilot

Ex-Spy Pilot Dies in Crash

LOS ANGELES — Former U-2 spy plane pilot Francis Gary Powers died Monday in a crash of his KNBC-TV helicopter in a field in Encino. Fire officials said.

A television camera man, George Spears, also died in the crash with Powers, 47, who had been piloting the news helicopter for the Burbank station since last November. Fire report

Girl Dies of Head Wound In 'Son of Sam' Ambush

NEW YORK (AP) — The mad gunman who calls himself "Son of Sam" claimed a tenth life Monday when a young woman died of a massive gunshot wound in the skull.

Stacy Moskowitz, a 20-year-old blonde secretary, was fatally wounded Sunday at 2:30 a.m. while she sat in a parked car under a bright street light with her date, Robert Violante, 20. Violante, also shot in the head, lost his left eye and may lose the sight in his right eye.

While 13 shootings have been attributed to Son of Sam and his .44-caliber killing revolver, seven of the victims have survived. Miss Moskowitz was the fifth to die since his first known attack one year and three days ago.

"An animal like this has to be caught, not to die or be killed but to be tortured for life," Stacy's mother, Reyna Moskowitz, told reporters.

"He'll see Indians. He's not human," Mrs. Moskowitz said. Stacy screaming down her throat. "He's not human to do this to young people."

Stacy's father, Jerome Moskowitz, also wept as he told reporters, "I lost a daughter I loved very much she was a great kid."

Stacy Moskowitz died at 5:32 p.m., nearly 20 hours after the crazed gunman shot her and Violante, a clothing salesman.

Kept alive only by a respirator, the attractive Brooklyn girl succumbed to massive brain damage.

"We did everything we could — it just wasn't enough," said Dr. William Sharbrack, a neurosurgeon.

Had she survived, he said, she would have been doomed to a vegetable-like state for life.

Meanwhile, a force of [illegible] police were involved in the search for the psychopathic killer.

Adding to their problems was the fact that about a dozen men, including one prime suspect, were released from police custody late because all were under surveillance at the time of the shooting.

But police now have a victim who saw the gunman, described as being white, about 5-foot-7, about 250 pounds, between 25 and 30 years old and carrying a .44-caliber revolver. One previous victim also saw him, but could not supply a good description.

A doctor at Kings County Hospital told Robert Violante had given police a description of the gunman. "He actually saw him," said Dr. Jeffrey Freedman.

But Freedman, an optometrist, noted that Violante had lost one eye to the gunman, with the other at least partially damaged. "I don't know if he (Violante) can identify him, since we don't know if he'll be able to see," Freedman said.

'An animal like this has to be caught, not to die or be killed but to be tortured for life.'

—Mrs. Reyna Moskowitz

Spirit Low At Jack's

LOUISVILLE, Ky. (AP) — How scarce is Jack Daniel's Tennessee sour mash whisky?

It's so scarce, say some tourists, that at the corporate stockholders' annual cocktail party, bartenders were pouring it from pitchers.

The reception last week confirmed what W. L. Lyons Brown Jr., president and chief executive officer, had told the Brown-Forman Distillers stockholders earlier: demand for Jack Daniel's continues to exceed supply.

"The stockholders, a few of them laughed at the joke [illegible], but they weren't surprised. Brown said in an interview Monday. "It's been short most of this year."

Because of the nature of the distilling business, demand must be projected four years in advance, when the liquor goes into the casks to be aged.

"If you guess wrong, you just don't have enough available," said a company spokesman. "It's not like

TODAY's Chuckle

A conference is a group of people discussing what they should be doing.

Left, Seconds After Ordering Clyde Bridges To Give Up Sheriff's Deputies Hear Shot; Right, Agents Rush His Cocoa Apartment

Cocoa Man Kills Self in Daylight Abduction

SUICIDE, From 1A

...on a real mess.

Bridges entered 50 an... through a security mes... customers couldn't hell... to draw inward [40 or 5...].

Cocoa police set up a roadblock on U.S. 1 near the Brevard Cameway, but didn't find the couple.

Cocoa police spotted the car an hour later outside Bridges apartment. He was taken up shortly after... his wife as a hostage.

A short time later, sher... department agents, led by Capt. Mark Overacker and Capt. Red May ar... ...ssed to talk Bridges into surrendering.

Action was stalled while agents sought vainly to locate a relative or friend of Bridges who could persuade him to give up. Another plan, talking to Bridges over the phone, failed when officers learned his apartment had no telephone.

Agents decided to move in and surround the apartment shortly after 5 p.m.

"Let's get this over with before dark," May told officers, "and please be careful."

Six squad cars from the sheriff's and Cocoa police departments drove up in front of the building, while other officers stood at the front and rear exits.

"Clyde Bridges, this is the Brevard County Sheriff's Department," May called through a bullhorn. "Come out with your hands up."

Seconds later, agents heard the pop of a revolver and the screams of a woman. Fearing Bridges had shot his wife, police rushed the building to find Mrs. Bridges nude screaming on a stairway and Bridges sprawling on the floor, apparently reaching for the gun he had dropped after shooting himself.

A deputy kicked the gun away and within moments Bridge's dead of internal wounds as his lung filled w...mpagning over his body.

According to May, Mrs. Bridges seemed calm after the shooting and wanted to give agents her statement before receiving medical treatment.

She told agents her husband had threatened to kill her after the kidnapping, and had charged: "I've had enough."

Mrs. Bridges was taken to Wuesthoff Memorial Hospital in Rockledge, where she was treated for shock and lacerations, and released. She was taken to the Titusville home of a friend.

Police said there was no indication she had been sexually assaulted.

Bridges' neighbors, who called him a quiet man, said they were shocked by his actions.

"He just has a wife never did much fighting or screaming," said apartment owner Ann Graybill. "I was pretty surprised when she moved out a few weeks ago. He seemed like a nice person."

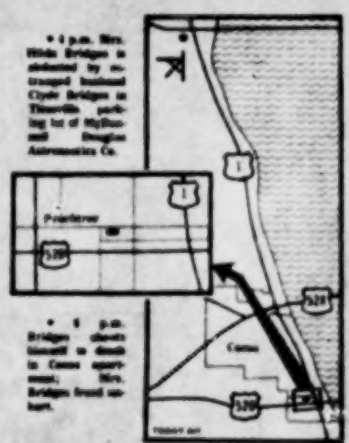
"Clyde used to come over when I got together with friends to drink beer and watch ballgames," said Bobby Smith who lived in the apartment above Bridges. "He didn't ever exhibit any stress."

"Sometimes he seemed kind of down," said Smith, who works at the Brevard Mental Health Center "but it never seemed to me he could do something like that."

Sheriff's agents, however, had a different feeling about Bridges.

"Everything we did was with one thing in mind," said Overacker. "We wanted to get that girl out alive."

"In that sense," May added, "I guess we won."


• 1 p.m. Mrs. Hilda Bridges is abducted by estranged husband Clyde Bridges in Titusville parking lot of Hollingsead Douglas Aeronautics Co.
Pineview
1
520
528
Cocoa
• 5 p.m. Bridges shoots himself to death in Cocoa apartment. Mrs. Bridges found unhurt.

President Inks Bill For NASA

WASHINGTON (AP) — President Carter has signed into authorizing $8.3 billion in appropriations for the next fiscal year, the White House said Monday. The bills include a $4.06 billion appropriation for NASA programs.

In addition to the NASA appropriation, the White House announcement said Carter approved the following authorizations for appropriation during fiscal 1978, which begins Oct. 1, 1977:

• $8.09 billion to buy weapons systems, pay for research, development, testing and evaluation of weapons systems, and to finance civil defense.

• $7.47 billion for operation of the Treasury Department, the Postal Service, the General Services Administration, the Civil Service Commission and most agencies in the Executive Office of the President.

• $5.72 billion for military construction.

The military construction bill requires the Defense Department to notify Congress and file an environmental impact statement on base changes involving more than 300 civilian employes.

At the same time, Carter asked Congress to provide an additional U.S. contribution of $1.5 million to voluntary programs of the Organization of American States.

The programs provide technical and educational assistance.

TODAY—AP Wirephoto

Well Heeled

Nancy McEwen, an assistant curator at the George Walter Vincent Smith Museum in Springfield, Mass., checks the "seams" on a 16-foot high, satin sculpture of a woman's legs by Ann Slavin. The well-heeled sculpture is called "Mrs. Lewis" and is part of an exhibition, "Women on Women."

Sub To Test Missile Off Brevard

A United States nuclear submarine will launch a ballistic Poseidon mis... Atlantic at noon Wednesday while submerged 30 miles off Brevard's coast, a Pentagon AP spokesman said Monday.

The launch will be the Poseidon missile and the fifth from ships and subs leaving the Earlier, since Poseidon last launches began here in August 1971, the spokesman said.

Presently, 31 of the Navy's 41 Ohio Class ballistic missile submarines are based at Kings Bay, Ga., and the remaining 10 are based at Bangor, Wash.

The Poseidon missile will be equipped with the nuclear weapons were

Visibility of the missile from land is expected to be poor. A meteorologist from the National Weather Service in Daytona Beach said

Conner Worth $664,833

DISCLOSURE, From 1A

TUCKER, LEWIS ALSO FILE

...were that qualifying deadline because we don't know exactly how this is supposed to work."

Lewis, D-West Palm Beach and chairman of the Senate Appropriations Committee, said the others refused to file after getting Senate Republican Leader Kenneth Plumlee's court challenge to the reform went. The others were Sens. Jack Gordon, D-Miami Beach, Dempsey Barron, D-Panama City, and William Gorman, R-Orlando.

Lewis, a millionaire real estate executive, was reported out of the state on a vacation from which he would not return until September, the last earlier filed a sworn statement saying his forms weren't completed because of this year's special legislative sessions. However, he promised to file them "on or about Aug. 1."

A variety of other lawmakers' forms weren't on file, but they may have been lost in the crush. For example, Speaker-designate Hyatt Brown's disclosure forms couldn't be located even though aides insisted that they had been filed earlier. They turned up later.

And officials couldn't even locate the file folder for House Transportation Chairman Fred Jones, D-Auburndale. No form was ever found in one of the half dozen disorganized piles of disclosure forms in a Capitol basement office that was jammed with news reporters.

Although the forms were supposed to be filed with the Elections Division, officials said that "most" of them were misdirected to the Ethics Commission. That panel drew up the forms and neglected to say

...banks that he has attributed to the tattered recession, is awaiting Senate confirmation for a seat on the Civil Aeronautics Board. He reported a net worth of $430,300 the listed assets of $1,681,326 and liabilities of $886,970.

He reported cash of $75,266, which included $68,675 in the Donald L. Tucker Dedicated Trust Fund, already owned by his stepdaughter Nai Polak. But Tucker reported elsewhere in his disclosure form $76,111 that he said was "in trust account."

Tucker's assets were chiefly in Tallahassee area real estate valued at $894,600. However, he noted that it "appears doubtful" that he will collect more than $977 in undistributed business partners who originally owed him $44,037.

In Tallahassee, the Tallahassee lawyer reported short-term debts of $107,500 and long-term notes worth $117,320. His unaudited report said that the long-term notes, without interest, require monthly payments of $1,200, and at least some of the debts extend to 1984. They were owed to a variety of Tallahassee area banks.

Tucker did not file his income tax form because, he said, the Internal Revenue Service had granted him an extension.

Comptroller Lewis reported a net worth of $8,511. He listed assets of $9,900 in savings accounts, stock in Vintage Enterprises Inc. worth $1,212, an automobile worth $2,000, personal goods worth $4,000, a second personal ship in Aligned-Carroll Farms in Riera of Peoples worth $1,000 and life insurance policies worth $18,051.

The comptroller also listed liabilities of $8,774 in loans against his life insurance policies. His primary source of income was his $40,000 state salary with some minor earnings from his investments. He reported paying taxes of $13,863.

Conner reported assets of $981,267 and liabilities of $288,434 for a net worth of $664,833. His assets chiefly were in agriculture with the largest being $597,000 in land, cattle and buildings at his Star C Ranch at Lloyd. He also reported $57,600 in assets for a Starke farm.

Statements Missing In Paperwork Flood

TALLAHASSEE (AP) — Financial disclosure forms for as many as 30 lawmakers weren't on file as a paper-clogged Elections Division Monday, the last day for filing before penalties may be imposed.

Disclosure forms for Clark Maxwell, R-Melbourne, could not be located in Tallahassee Monday, but Maxwell said he had mailed the documents last week. All other Brevard legislators have filed.

Five senators—Philip A. Lewis, D-West Palm Beach, Jack Gordon, D-Miami Beach, Dempsey Barron, D-Panama City, Kenneth Plante, R-Winter Park, and William Gorman, R-Orlando, are defying the voters' orders for full financial disclosure.

Other senators whose complete forms could not be located were Sen. Jon Gilman, D-Tavares, Education Chairman Curtis Peterson, D-Lakeland, Sen. Jim Scott, R-Fort Lauderdale, Sen. Dick Renick, D-Miami, Sen. Jim Thomas, D-Fort Lauderdale, Corrections Chairman Pat Thomas, D-Quincy, and Sen. George Williamson, R-Fort Lauderdale.

House members whose complete forms couldn't be located were Reps. Hugh Black III, D-Miami; Robert Crawford, D-Winter Haven, Harold Dyer, D-Hollywood, Commerce Chairman John Forbes, and Retirement Chairman George Grimsley, both D-Jacksonville and Criminal Justice Chairman Ralph Haben, D-Palmetto.

Others were Reps. Clyde Hagler, D-Pensacola, Mary Ellen Hawkins, R-Naples, George Reeher, R-St. Petersburg, Majority Leader John Hill, D-Miami, Wayne Hollingsworth, D-Lake City, Minority Leader Bob Jones, R-Delray Beach, John Lewis, D-Jacksonville, Tom Lewis, R-Palm Beach, John Cyril Malloy, D-Miami, James McDonald, R-St. Petersburg, and Paul Steinberg, D-Miami Beach.

Consumer Plan Pushed

WASHINGTON — In an effort to persuade Congress to create an Agency for Consumer Advocacy, the Carter Administration said Monday that 26 existing agencies would either be absorbed in the new office or scrapped, for a first-year savings of $5 million.

The umbrella agency, which President Carter said last April he wants Congress to establish, has not yet been approved. Some administration aides say they are worried that pressure from business lobbies has stalled the measure.

NATION

"We are recommending the consolidation of 26 existing consumer units which, as presently constituted, would duplicate the functions of the new consumer agency," Bert Lance, the President's budget director, told the speaker of the House and the president of the Senate in a letter.

WORLD

Soweto Rioter Killed

JOHANNESBURG, South Africa — Police shot and killed one man and wounded another in putting down disturbances Monday in parts of the huge black township of Soweto near Johannesburg, authorities said.

Brig. J.J. Gerber, deputy chief of Soweto police, said police also fired rubber bullets and tear gas, swung billies and unleashed dogs to disperse rioters in several locations.

He said officers captured 100 students who were

NOTICE INVOKING JURISDICTION OF FLORIDA SUPREME COURT

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, FIFTH DISTRICT.

CASE NOS. 81-1552 and 81-1566

CAPE PUBLICATIONS, INC., and SCOTT MACLAY,
Defendants/respondents,

vs.

HILDA BRIDGES,
Plaintiff/petitioner.

NOTICE

NOTICE IS HEREBY GIVEN that HILDA BRIDGES, plaintiff/petitioner, invokes the certiorari jurisdiction of the Supreme Court to review the decision of this Court dated November 24, 1982, and rendered on December 16, 1982, upon denial of a timely filed petition for rehearing.

The petitioner invokes the jurisdiction of the Supreme Court on the ground that the decision rendered in the District Court of Appeal, Fifth District, is in direct conflict with decisions rendered by other District Courts of Appeal and the Supreme Court of Florida, pursuant to Rule 9.030(a) (2) (iii).

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Attorneys for Petitioner

/s/EDWARD A. PERSE

[CERTIFICATE OF SERVICE OMITTED]

PETITIONER'S BRIEF ON JURISDICTION IN FLORIDA SUPREME COURT

IN THE SUPREME COURT OF FLORIDA

CASE NO. 63,088

HILDA BRIDGES,

Petitioner,

vs.

CAPE PUBLICATIONS, INC., et al,

Respondents,

PETITIONER'S BRIEF ON JURISDICTION

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and
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410 Concord Building
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Attorneys for Petitioner

[LIST OF CITATIONS AND AUTHORITIES OMITTED]

I.

INTRODUCTION

Petitioner was invasion of privacy, intentional infliction of emotional distress and trespass plaintiff in the trial court, and appellee/cross appellant in the District Court of Appeal. Respondents, newspaper and its assistant chief photographer, were defendants in the trial court and appellants/cross appellees in the District Court of Appeal. The parties will alternately be referred to herein as they stand before this Court and as follows: petitioner as "BRIDGES" and respondents, in the singular, as "CAPE PUBLICATIONS." The symbol "A" shall stand for petitioner's appendix filed contemporaneously herewith as required by the Florida Rules of Appellate Procedure.

All emphasis appearing in this brief is supplied by counsel unless otherwise noted.

II.

JURISDICTIONAL STATEMENT

This proceeding has been instituted, and the jurisdiction of this Court is invoked, under the aegis of Article IV, §3(b)(3) of the Florida Constitution as amended April 1, 1980, and Rule 9.030(a)(2)(iv), Florida Rules of Appellate Procedure, as construed by this Court in JENKINS v. STATE, 385 So. 2d 1356 (Fla. 1980), and DODI PUBLISHING CO. v. EDITORIAL AMERICA, S.A., 385 So. 2d 1369 (Fla. 1980). Petitioner contends that the decision sought to be reviewed is in express and direct conflict with the decisions rendered by the Florida Appellate Courts in — THOMPSON v. JACOBS, 314 So. 2d 797 (Fla. 1 DCA 1975); PORT O-CALL INN, INC. v. MORRIS, 206 So. 2d 241 (Fla. 2 DCA 1968); BERMIL CORPORATION v. SAWYER, 353 So. 2d 579 (Fla. 3 DCA 1977) and CAPE PUBLICATIONS, INC. v. ADAMS, 336 So. 2d 1197 (Fla. 4 DCA 1976).

III.

STATEMENT OF CASE AND FACTS

The District Court of Appeal, in the decision sought to be reviewed (A. 1-4), stated the facts of this case to be the following:

* * *

> "Appellee Bridges brought suit against appellants on the theories of invasion of privacy, *intentional infliction of emotional distress,* and trespass, alleging that appellant's conduct in publishing a photograph of appellee was actionable. The news story reported the abduction of appellee by her estranged husband who came to her workplace and at gunpoint forced her to do [sic] with him to their former apartment. The police were alerted and after surrounding the apartment began efforts to free appellee. Her husband forced her to disrobe in an effort to prevent her escape. Her life was obviously in danger. This is a typical exciting emotion-packed drama to which newspeople, and others, are attracted. It is a newsworthy story. Upon hearing a gunshot, the police stormed the apartment and rushed appellee outside to safety. Appellee ws [sic] clutching a dish towel to her body in order to conceal her nudity as she was escorted to the police car in full public view. The photograph revealed litle more than could be seen had appellee been wearing a bikini and somewhat less than some bathing suits seen on the beaches. There were other more revealing photographs taken which were not published. The published photograph is more a depiction of grief, fright, emotional tension and flight than it is an appeal to other sensual appetites. The jury awarded appellee $1,000.00 in compensatory damages and $9,000.00 in punitive damages."

* * *

BRIDGES had abandoned her trespass claim at trial. ***It must be emphasized that the trial court found that there was sufficient evidence to submit this case to the jury on both BRIDGES' invasion of privacy and intentional infliction of emotional distress theories.***

In the decision sought to be reviewed, the District Court held that BRIDGES' invasion of privacy action — and there is no doubt that that occurred here — had to give way to freedom of the press considerations because the event in which she was involved was "newsworthy." With regard to the invasion of privacy cause of action, the Court stated:

* * *

> "Although publication of the photograph, which won industry awards, could be considered by some to be in bad taste, the law in Florida seems settled that where one becomes an actor in an occurence of public interest, it is not an invasion of her right to privacy to publish her photograph with an account of such occurrence. *Jacova,* 83 So. 2d at 36. Just because the story and the photograph may be embarrassing or distressful to the plaintiff does not mean the newspaper cannot publish what is otherwise newsworthy."

* * *

With regard to BRIDGES' intentional infliction of emotional distress cause of action — which is an entirely different breed of cat — the District Court stated and held:

> "Likewise, the publication of the story and photograph does not meet the test of outrageousness as required for the independent tort of intentional infliction of emotional distress. *See Food Fair, Inc. v. Anderson,* 382 So. 2d 150, 153 (Fla. 5th DCA 1980).
>
> "Courts should be reluctant to interfere with a newspaper's privilege to publish news in the public interest. The trial court erred in denying appellant's Motions for Directed Verdict and Judgment Notwithstanding the Verdict, so we must reverse the judgment.
>
> REVERSED."

* * *

In due course, BRIDGES times [sic] filed a petition for rehearing (A. 5-7) which was denied. These certiorari proceedings followed in due course.

IV.

POINT INVOLVED ON JURISDICTION

WHETHER THE DECISION SOUGHT TO BE REVIEWED IS IN DIRECT CONFLICT WITH THE DECISIONS RENDERED BY THE DISTRICT COURTS OF APPEAL, FIRST, SECOND, THIRD AND FOURTH DISTRICTS, IN — THOMPSON v. JACOBS, supra; 314 So. 2d 797; PORT O-CALL, INN, INC. v. MORRIS, supra, 206 So. 2d 241; BERMIL CORP. v. SAWYER, supra, 353 So. 2d 579; AND CAPE PUBLICATIONS, INC. v. ADAMS, supra, 336 So. 2d 1197.

V.

ARGUMENT

THE DECISION SOUGHT TO BE REVIEWED IS IN DIRECT CONFLICT WITH THE DECISIONS RENDERED BY THE FLORIDA DISTRICT COURTS OF APPEAL, FIRST, SECOND, THIRD AND FOURTH DISTRICTS, IN THE CITED CASES.

A.

APPLICABLE JURISDICTIONAL PRINCIPLES

Petitioner does not believe that the recent amendment to Article IV as construed by the decisions rendered by this Court in JENKINS v. STATE, 385 So. 2d 1356 (Fla. 1980); and DODI PUBLISHING CO. v. EDITORIAL AMERICA, S.A., 385 So. 2d 1369 (Fla. 1980) changes in any appreciable way the guidelines utilized to ascertain and/or establish the existence of "direct conflict" in a case such as this which does not fall within the JENKINS and DODI rules. That is to say, this Court has jurisdiction to review the decisions of District Courts of Appeal on direct conflict grounds to resolve embarrassing conflict between such decisions. Jurisdiction may still be in-

voked where a District Court of Appeal: (1) announces a rule of law which conflicts with a rule previously announced by another Florida appellate court; or (2) applies a rule of law to produce a different result in a case which involves substantially the same controlling facts as a prior case disposed of by a Florida appellate court; or (3) misapplies precedent; or (4) misapplies and/or refuses to apply applicable law to a case under consideration. See Article IV, Section 3, Florida Constitution, supra; WALE v. BARNES, 278 So. 2d 601 (Fla. 1973); BELCHER v. BELCHER, 271 So., 2d 7 (Fla. 1972); and NIELSEN v. CITY OF SARASOTA, 177 So. 2d 731 (Fla. 1960). *It, of course, became established that a category (3) misapplication of precedent occurred where a District Court relied as support for its decision upon a case legally and factually at variance with the case decided.*

B.

THE DIRECT CONFLICT

The cited cases — one from each District Court of Appeal except the Fifth District Court of Appeal — are but four of the multitude of Florida cases which stand for the following well established appellate principles:

1. The party seeking to have a jury verdict set aside admits, for purposes of that proceeding, all material facts as testified to by the opposing party, and all other evidence together with all inferences favorable to the opposing party which might reasonably be drawn from the evidence as a whole.

2. The criteria by which the verdict of a jury must be judged is whether there was sufficient competent evidence before the jury from which the jurors, as reasonable people, could have reached the findings of fact inherent in the verdict.

3. A jury verdict and judgment entered in accordance therewith come before a District Court of Appeal clothed with a presumption of correctness.

4. The function of an appellate court is not to substitute its judgment for that of a jury on disputed questions of fact.

Reverting to the case at Bar, and setting aside any questions relating to BRIDGES' cause of action for invasion of privacy, she also pled and proved a cause of action for intentional infliction of emotional distress. Such a tort does exist in Florida. A jury may award damages to a plaintiff on such a cause of action when it finds that the defendant has acted in such a manner that its conduct exceeds all bounds which could be tolerated by society, and is of a nature especially calculated to cause mental damage of a very serious kind. See FOOD FAIR, INC. v. ANDERSON, 382 So. 2d 150 (Fla. 5 DCA 1980), and numerous cases cited therein. In view of the intentional nature of the tort, a newspaper cannot nearly as easily hide behind the first amendment and concepts related to "newsworthiness." The trial court found on this record that BRIDGES had proved a jury submissible case of intentional infliction of emotional distress. The jury was charged in that regard. The jury found that respondents had in fact committed a tort. Yet in the decision sought to be reviewed, the District Court of Appeal totally ignored the principles of law detailed, supra, and glossed over the record stating simply that the test of outrageousness had not been met. In so doing, the District Court climbed into the jury box and rendered a decision in direct conflict with the decisions rendered by the other District Courts of Appeal of Florida in the cited cases.

VI.

CONCLUSION

It is respectfully submitted that for the reasons stated herein, the decision sought to be reviewed is in express and direct conflict with the cited decisions. This Court should exercise its discretionary jurisdiction in the premises because a gross injustice has been done here by a defendant found by a jury to be guilty of the tort of intentional infliction of emotional distress.

Respectfully submitted,

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